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FAA-2001-9854-3

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Dockets No. FAA-2001- 9852; No. FAA-2001-9854]

Notice of Alternative Policy Options for Managing Capacity at LaGuardia Airport and Proposed Extension of the Lottery Allocation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments on alternative policy options for managing capacity and mitigating congestion and delay at LaGuardia Airport (LGA) and the proposed extension of the lottery allocation.

SUMMARY: The Federal Aviation Administration is gathering information on the feasibility and effectiveness of a limited number of demand management options that could replace the current temporary administrative limits on the number of aircraft operations at LGA which are scheduled to expire on September 15, 2001. Because of the unique circumstances that exist at LGA and the need to avoid gridlock at one of the nation's most critical airports, the FAA is examining various demand management approaches – that is, approaches that would continue to bring airport demand and capacity into equilibrium. The options discussed below are classified into either market-based or administrative options. While two specific options submitted by the Port Authority of New York and New Jersey (PANYNJ) are included for comment in this Federal Register Notice, FAA does not propose, nor endorse, either of these options at this time.

Replaced 6/7/01 2:43pm Pub. 6/12/01

The FAA will use the information provided by interested parties, as well as other research, to identify an access management process that will allocate LGA's limited capacity among aircraft operators. Commenters are requested to discuss how the various demand management options would affect other important public policy objectives, such as airline competition and small community access to important air travel markets, and may raise legal and regulatory impediments, although that is not the focus of this notice.

DATES: Comments on Phase One, the temporary extension of the current administrative lottery allocation beyond September 14, 2001, must be received by [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER NOTICE]. Comments on Phase Two, demand management options to replace the current administrative allocation, must be received by [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER NOTICE].

ADDRESSES: Comments should be mailed or delivered in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA-2001-9852 for Phase One and Docket No. FAA-2001-9854 for Phase Two, 400 Seventh Street, SW, Room Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following Internet address: DMS.dot.gov. Comments may be filed and/or examined in Room Plaza 401 between 10:00 a.m. and 5:00 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John M. Rodgers, Director, Office of Aviation Policy and Plans, 800 Independence Avenue, SW, Washington, DC 20591; telephone number 202-267-3274.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impacts of each option are also invited. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned policy decisions. Communications should identify the docket number and be submitted in triplicate to the address specified above. All communications and a report summarizing any substantive public contact with FAA personnel on this notice will be filed in the appropriate docket. The dockets are available for public inspection both before and after the closing dates for receiving comments.

Before taking any final action on this matter, the Administrator will consider all comments made on or before the closing dates for comments.

The FAA will acknowledge receipt of a comment if the commentor includes a self-addressed, stamped postcard with the comment. The postcard should be marked "Comments to Docket No. FAA-2001-9852" For Phase One or "Docket no. FAA-2001-

9854" for Phase Two. When the comment is received by the FAA, the postcard will be dated, time stamped, and returned to the commentor.

BACKGROUND:

A. History

PANYNJ operates four airports: John F. Kennedy International, Newark International, LaGuardia Airport and Teterboro Airport. These airports are used intensively with over 90 million passengers, 2.8 million tons of cargo, and over 1.4 million aircraft movements passing through them each year. Each airport plays a different role, targeted for different users and designed to accommodate different types of operations. LGA, just seven miles from midtown Manhattan is the close-in airport offering frequent, short-haul service to meet the needs of the business community. As a result, the airport experiences a steady and heavy flow of arrivals and departures throughout the day – early morning and through early evening. Demand for access to LGA has been so great that in 1969 the FAA promulgated the High Density Rule (HDR)[1] which is in effect at LGA and three other congested airports. Given the hub and spoke nature of airline service in the United States, delays at LGA can quickly proliferate throughout the entire aviation system, causing delays and ground holds across significant portions of the country.

Recent legislation has made it even more important that the capacity/demand imbalance at LGA be addressed. On April 5, 2000, the Wendell H. Ford Aviation Investment and Reform Act of the 21st Century (AIR-21) was enacted, exempting certain flights from the HDR operation limits and providing for the rule to end in 2007. Specifically, AIR-21

exempts flights operated by new entrant carriers or flights that serve small hub and non-hub airports with aircraft with less than 71 seats. Exemption requests for more than 600 flights were filed with DOT and approved. By September 2000, air carriers had added nearly 200 new scheduled flights at LGA, with plans to operate more than 300 new flights by the end of January 2001. While direct service to LGA increased, so too did delays. In September, as calculated from FAA's Air Traffic Operations Network Database (OPSNET), flight delays at LGA accounted for 25 percent of the nation's delays, compared to 10 percent for the previous year.

Concerned about the accelerating levels of congestion, flight delays, and cancellations and the prospects of reaching gridlock, PANYNJ attempted to impose a temporary moratorium on new flights at LGA and requested the assistance of the FAA. Using its authority under 49 U.S.C. 40103 and pending the development of a longer-term solution, the FAA published a Notice of Intent in the Federal Register on November 15, 2000, announcing its intention to temporarily cap AIR-21 slot exemptions at LGA and allocate them via a lottery (65 FR 69126; November 15, 2000). The lottery, which was conducted on December 4, 2000, followed procedures published in the Federal Register and was based on an airspace management limit of 75 scheduled operations per hour (plus 6 "other" operations primarily used by the general aviation community) beginning January 31, 2001 (65 FR 75765; December 4, 2000). In order to attain that limitation, the number of AIR-21 slot exemptions at LGA was restricted to a total of 159 a day between the hours of 7:00 a.m. and 9:59 p.m. The December 4 lottery allocation remains in effect

[1] Title 14 of the Code Federal Regulations, Part 93, Subpart K

until September 15, 2001, unless extended, while the FAA explores other options to manage the imbalance between airport capacity and demand on a more permanent basis.

When an airport begins to routinely experience increasing levels of delay, the airport operator often considers ways to increase the airport's limited capacity such as the addition of new runways. The FAA believes that this is the preferred approach for relieving airport congestion and reducing delay. However, in certain cases, runway expansion is neither practicable nor feasible. For example, at LGA-- located on 680 acres in the Borough of Queens, New York City, bordered by Flushing and Bower Bays-- there is little opportunity for runway expansion. Consequently, delay must be addressed by other means.

B. The Operating Environment at LGA

The FAA's analysis indicates that an operationally acceptable level of daily flights during peak hours at LGA is in the low to mid-1200's rather than the mid-1300's or more as occurred at the airport during fall 2000. At that higher level of scheduled demand, it was common to experience lengthy delays even during periods when there was good weather and the airport was operating at maximum capacity.

In April 2000, prior to the implementation of any AIR-21 exemptions, LGA had an average of 1,039 daily operations and 104 daily delays of 15 minutes or more. The number of allocated slot reservations including scheduled and non-scheduled operations was approximately 71 per hour. During September 2000, airlines began the scheduled operation of almost 200 exemption flights. The number of slots and slot exemptions

allocated during the morning and afternoon periods peaked at the low 90's per hour. LGA had an average of 1,163 daily operations and 351 daily delays during September. Hourly schedules beyond capacity compounded operational issues since delays starting in the early morning hours frequently impact later flights. By November 2000, carriers hac added about 300 exemption flights and the hourly scheduled allocation exceeded 100 in peak hours. Between April 2000 and November 2000, the average daily operations increased by over 22 percent and the average daily delays increased by over 230 percent.

During September and October 2000, there was also an increase in the number and duration of flight disruptions and irregular operations caused by long delays. Airlines had operational and customer service issues because aircraft were out of operational sequence, crews on delayed flights exceeded the permitted duty time, and passengers missed connecting flights. In many cases, the airlines responded to the delay situation by canceling flights and accommodating passengers on alternative flights. This means that, although the reported delays increased significantly along with the traffic growth, the full impact of the cancellations and flight disruptions is understated in the delay and operational statistics. The impact was particularly burdensome for new entrant carriers that operate only a few flights at the airport. Because they have less flexibility, they offered fewer alternatives and some passengers were either accommodated on competitors' flights or on subsequent days.

Notwithstanding the level of delays in November 2000, carriers had scheduled additional flights to begin in the next few months. Capacity simply did not exist to accommodate the increased level of flights without daily traffic management programs, limiting

demand and delaying flights to ensure the safety of the operation. The volume-related delays at LGA negatively impacted the efficiency of the air traffic control system. Therefore, the FAA decided to reduce the number of AIR-21 operations at the airport and allocate the exemptions by spreading them out in a manner that would ensure they could be accommodated without substantial delay, at least under good weather conditions.

The following table reflects operational and delay data for LGA before AIR-21, the impact during fall 2000, and after the lottery schedules were implemented.

Table 1

Operations and Delays

	71	104 (peak)	81
	31,116	37,373	34,874
	3,109	10,226	2,941
	1,039	1,268	1,162
	104	330	98
	9.97	27.36	8.43
	44.1	40.84	40.51
	6.49	7.49	7.36
	26.98	31.79	25.49

Source: FAA's OPSNET and FAA's Slot Administration Office.

Following the implementation of the reduced daily and hourly operating levels on January 31, 2001, delays have decreased by 71 percent compared to October 2000. The data for April 2001 compares favorably to the pre-AIR-21 levels for April 2000 despite the increased daily flights (i.e., the 159 exemption flights allocated in the December 4 lottery). Average daily delays, the percentage of operations delayed, average delay times, and average taxi-out times have all decreased. In the first three months following the implementation of the revised schedules, LGA's share of total airport delays was 11

percent compared to almost 30 percent in fall 2000. Finally, the most recently available on-time arrival performance for March 2001, as reported to the Department of Transportation, has improved by 13 percentage points over the October 2000 levels.

The FAA believes it is a significant accomplishment of the airport and ATC system for LGA to have a year over year growth of twelve percent in average daily operations while generally maintaining the performance of the airport prior to the implementation of the AIR-21 exemptions. This would be a notable accomplishment at many airports but is particularly so at LGA given the physical limitations of the airfield, the complexity of the surrounding airspace, and the challenges of accommodating a changing fleet mix. The FAA finds that the current cap on scheduled operations manages delay and congestion and still accommodates the AIR-21 exemptions to the greatest extent practical. At the current demand levels, airlines are better able to plan their operations and there are fewer non-weather related disruptions and irregular operations. This is representative of the level of system performance the flying public expects and can be realized at LGA given a combination of reasonable demand and good system conditions.

The FAA will continue to monitor system performance and pursue procedural and other capacity enhancements. However, the FAA reaffirms that the existing cap of 75 scheduled operations is the current practical hourly limit for scheduled flights at the airport (plus 6 "other" general aviation/unscheduled operations), and we believe that any adopted demand management policies should reflect that established operational limit.

However, there are other factors that must also be considered which may have contributed to congestion and delay at LGA. For example, in recent years there has been a continuing trend toward using smaller aircraft for the provision of scheduled service at LGA. In fact, over the last six years there has been a significant increase in the use of smaller aircraft serving LGA. For example, as Table 2 illustrates, in April 1996, 26.54% of all air carrier operations were conducted by aircraft of 77 seats or less. By April 2001 this percentage has increase to 36.71%. While the use of small aircraft has promoted service to small communities, these aircraft may have also contributed to the congestion and delay experienced at LGA while accommodating fewer passengers than larger aircraft. A proper balance between access and airport congestion must be struck if LGA's limited resources are to be used as efficiently as possible.

Table 2
Percent Distribution of Air Carrier Operations at LGA by Seat Size

	26.54	30.86	36.71
	10.82	6.15	4.86
	62.64	62.99	58.43

Source: Official Airline Guide.

The Office of the Secretary and the FAA are currently examining the broader policy implications of demand management options at congested airports throughout the United States from both a local and national perspective. It is DOT's intention to develop a full array of public policy tools to develop a comprehensive aviation strategy that focuses on ways to reduce delays, improve airport capacity management, enhance competition,

and promote the efficiency of the overall aviation system. However, based on the unique circumstances at LGA, the FAA anticipates that action will be necessary at LGA in the near term. There are several characteristics that make the situation at LGA unique. First, given LGA's prominence in the national airspace system, local delay events routinely proliferate throughout large portions of the aviation system. Second, the amount of airport congestion experienced prior to implementation of the December 4, 2000 lottery allocation was on the verge of creating gridlock and it is critical that we act to avoid this reoccurrence. Third, LGA is a HDR airport at which operations are limited by regulation until 2007.

Given the unique circumstances that exist at LGA, the FAA believes that a demand management approach has potential to continue to realign demand with capacity and provide for an effective and efficient means of allocating the airport's limited capacity once the exemption slot lottery allocation is no longer in place. But any special demand management measures at LGA would maintain the Federal policy that requires airport operators to provide reasonable and nondiscriminatory access to air carriers.

OPTIONS

The FAA is considering a phased approach in its implementation of a demand management solution at LGA. In the first phase, the FAA would extend the existing lottery and hold an additional lottery to allocate any unused capacity. In the second phase, one of several demand management approaches would be adopted. The approaches currently under consideration are discussed below. Beyond these approaches, the FAA recognizes that there may be other effective approaches that it should consider

and strongly encourages the submission of comments on any approach that could continue to manage airport delay and congestion at LGA. When evaluating each proposed option, commenters are requested to consider the following points:

- The option should effectively manage airport delay and congestion at LGA.
- The option should improve the efficient use of the airport's capacity, and to the extent possible, expand capacity at the airport or within those aviation facilities operated by PANYNJ.
- The option may use economic incentives to bring about a balance between airport capacity and demand.
- The option should be flexible enough to allow policy makers the opportunity to address certain policy goals such as ensuring air carrier competition and service to small communities.
- The option cannot degrade aviation safety.

A. Phase One: Extend the Existing Lottery Allocation and Hold an Additional Lottery to Allocate Unused Capacity

The FAA considered three options that would extend the December 2000 lottery allocation, but proposes only one of the options in this notice for comment. The first option was to extend the termination date of the current lottery allocation. While this option would not disrupt current scheduled operations, it does not have the flexibility necessary to take into account changes, such as returned or unused slot exemptions, since the lottery was held on December 4, 2000. The second option would be to conduct a new lottery of all 159 AIR-21 slot exemptions. This option was rejected because, with limited

exceptions, new entrant and small community carriers have implemented viable schedules using the slot times currently allocated. Additionally, the FAA determined that it would be too disruptive for the carriers, passengers and communities that have benefited from new schedules following the December lottery.

The last option considered is the option proposed by the FAA in this notice for comment. The FAA proposes to maintain the slot lottery allocation, that began January 31, 2001, and to conduct an additional lottery to allocate certain available capacity. This option would maintain the current allocation without disruption and provides opportunity for new entrant carriers that were limited or excluded from the first lottery. It was the FAA's intention for the slot lottery allocation to be a short-term solution and that the eligibility criteria, which limited participation in the lottery to carriers that had received an allocation from the FAA by November 9, 2000, and planned to begin service by January 1, 2001, was warranted in order to recognize existing service while discouraging the filing of additional requests and commencement of new service. Given that it is necessary to maintain current operational limits, the FAA believes that unused available capacity should provide access to LGA for carriers that previously were excluded or did not receive a full allotment as a new entrant. However, this access must be within the current operational limit.

The FAA proposes to make available through the new lottery four AIR-21 slot exemption times that were selected by Southeast Airlines in the December 4 lottery but subsequently not used. Additionally, there are 10 slot exemptions in the 9 p.m. hour that were turned in to the FAA permanently. Consequently, there are 14 exemption slots that are available

for allocation. Carriers that permanently returned exemption slots, had exemption slots withdrawn for non-use, or otherwise did not operate the selected slot exemptions will have their number of slots exemptions reduced accordingly. The agency considered whether the seven slots selected by Legend Airlines and subsequently allocated by a contingency round should be withdrawn and made available during this second lottery. Upon consideration, the FAA determined that the withdrawal of these exemption slots would further disrupt carrier schedules and that these slots should continue to be used by the carriers that participated in the contingency round. In the event that prior to this proposed lottery additional slot exemptions are permanently returned by airlines or withdrawn by the FAA for non-use, those slot exemptions would be placed in the available pool for reallocation.

The agency proposes that carriers eligible to participate in the lottery for these 14 exemption slots be initially limited to new entrant carriers that did not participate in the December 4 lottery or new entrant carriers that were unable to select up to four exemption slots during the first round of the December 4 lottery. Any slot exemption not selected by a new entrant in the first round would be offered to all eligible carriers again using the established rank order from the December 4 lottery. Consistent with the intent of AIR-21 this proposed allocation to new entrants through this additional lottery will provide an opportunity to maintain approximately the same balance of slot exemptions for new entrants and service to small communities.

Vanguard Airlines is the only carrier which participated in the first lottery that was limited to selecting less than the four slot exemptions permitted in the first round to all

other participating new entrant carriers. The FAA believes that allowing Vanguard limited participation to potentially select two additional slots exemptions places it on equal footing with other new entrant carriers that may participate in this proposed lottery

The FAA proposes to follow similar lottery procedures as set forth in the December 4, 2000, Federal Register notice, with certain modifications. All carriers eligible to participate in the lottery must meet the eligibility criteria for AIR-21 operations, as articulated under OST Order 2000-4-10. A notice of intent to participate in the lottery by a carrier must be received by the FAA Slot Administration Office by the date specified in a notice of lottery subsequently published in the Federal Register. Any slot exemptions not selected by participating new entrant carriers would be made available for service to small-hub and non-hub airports by carriers that participated in the December 4, 2000, lottery and allocated in accordance with the established rank order from that lottery. Similar to the December 4 lottery, participating new entrant carriers would select available slot exemption times until the carrier had a maximum of four slot exemptions during peak hours. Also, consistent with the first round provisions of the December 4 lottery, the FAA proposes that new entrant carriers be able to select exemption times without regard to the cap of 75 scheduled operations per hour. However, the FAA does have concern that certain hours may become oversubscribed. For example, in the 5 p.m. hour, additional selections by new entrant airlines in the December 4 lottery had resulted in 80 scheduled slot operations allocated during this hour. If flights during current peak periods were to increase, the operational and delay consequences to all operators may offset the benefits for new entrants. In order to maintain a balance between the operational benefits of a limit of 75 scheduled operations

per hour and the additional flexibility that may be needed by certain new entrant airlines the FAA does reserve, if necessary, that certain hours (for example, 5:00 p.m. and 6:00 p.m.) may be limited or excluded for the purpose of new entrant airline selections exceeding the 75 hourly cap.

The lottery procedures are proposed as follows:

1. New entrant carriers eligible to participate in this lottery are carriers that did not participate in the December 4 lottery or carriers that selected less than four exemption slots during the first round of the December 4 lottery and must have certified to the Department of Transportation in accordance with the procedures articulated in OST Order 2000-4-10.
2. New entrant carriers intending to participate must notify the FAA Slot Administration Office by the date specified in the notice of lottery to be published in the Federal Register.
3. New entrant carriers will participate in a random drawing for selection order. Carriers will select in that order. Each carrier must make its selection within 5 minutes after being called or it shall lose its turn.
4. No new entrant carrier may select more than four exemption times. Carriers that hold less than four slot exemptions may only select slot exemptions so as to not exceed holding a total of four. Each new entrant carrier may select one slot exemption time in each hour without regard to whether a slot is available in that hour. The available times and any applicable restrictions concerning available exemption slot times will be announced in the notice of lottery.
5. There will be one round reserved for selection by new entrant carriers. That round will be concluded when all participating new entrant carriers have reached their

maximum allocation, or carriers choose not to select remaining available times. Any remaining slot exemption times once the first round is completed will be made available to carriers providing service to small hub or non-hub airports in accordance with the established rank order from the December 4, 2000 lottery.

6. The FAA Chief Counsel will be the final decision-maker concerning eligibility of carriers to participate in the lottery.
7. The slot exemptions reallocated by lottery will remain in effect through October 26, 2002. If circumstances warrant, this date may be extended through notice in the Federal Register.
8. All operations allocated under these lottery procedures must commence by October 29, 2001.
9. All carriers that participate and select exemption slots during the lottery must re-certify to the Department of Transportation in accordance with the procedures articulated in OST Orders 2000-4-10 and 2000-4-11, and provide the Department and the FAA with the markets to be served, the number of exemption slots, the frequency, and the time of operation.
10. The allocation of slot exemptions by this proposed lottery would remain through October 26, 2002. In this notice, the FAA discusses several longer-term demand management options. A number of these options could not be implemented prior to October 26, 2002. In the event that the longer-term option selected cannot be implemented before the above date, the FAA anticipates that continued restrictions on the operation of AIR-21 slot exemptions in the interim would be necessary. Any slot that becomes available during the effective period of the

lottery allocation will be allocated to eligible carriers using the established rank orders. The FAA may extend the effective period of the lottery allocation by publication of a notice in the Federal Register. If the FAA determines that a sufficient number of slot exemptions are available, these slot exemptions would be allocated by a lottery. Subsequent notices of lotteries would be published in the Federal Register and set forth the details of available slot exemption times, any applicable hourly restrictions and required start-up dates. Eligibility criteria for future lotteries would be updated to reflect prior allocation and operation of slot exemptions.

B. Phase Two: Implementation of a Longer-term Solution

It is paramount to assure that all other reasonable options to expand LGA's limited runway capacity have been explored. For example, should the PANYNJ conduct a comprehensive capacity enhancement study, identifying all actions that it will take to increase capacity or efficiency at the airport prior to implementing demand management approaches.

Given an apparent inability to significantly expand airfield capacity at LGA, the FAA believes that the only way to ensure that the demand for and the supply of airfield capacity at the airport remains in balance, over the long run, may be to adopt demand management at LGA. The approaches that are currently under consideration can be generally classified into two categories: market-based and administrative options. However, it would be possible to create hybrid options based on the characteristics of each approach. These general approaches are discussed below.

I. Market-Based Options

The FAA is currently considering two general types of market-based options to manage demand and allocate capacity at LGA. The first option would allow PANYNJ to establish a congestion price for landings and takeoffs. The second option is to hold an auction for a predetermined number of landing and take-off rights at LGA. Economic theory suggests that under perfect information and absent any competitive constraints, both approaches (if fully implemented) would yield an efficient allocation of resources and would generate an equal amount of revenue. The difference between the two options is the role of the market. Under an auction, the FAA determines the number of available landing rights and the market determines their value. Under congestion pricing, the price is set by the PANYNJ and the market then determines how many landing rights will be used at that price. The general characteristics of each option are described below. In addition to a generalized description of these market-based solutions, two specific applications of these approaches are outlined below. These specific options were developed by PANYNJ for consideration by the FAA and are fully detailed in the Appendix. While the specific options submitted by PANYNJ are included for comment in this Federal Register notice, FAA does not propose, nor endorse, either of these options at this time. Federal laws, regulations, and U.S. international obligations presently in place may, in fact, prevent PANYNJ from imposing these proposals. In this notice we seek suggestions on effective, comprehensive solutions that represent the best public policy for controlling congestion and allocating operating rights at LGA, and we will consider pertinent legal issues in any policy options ultimately put forward for adoption.

A. Congestion-Based Landing Fees

1.) A Generalized Description of a Congestion-Based Landing Fee

The congestion based landing fee option allocates slots (under the HDR) and slot exemptions (under AIR-21 and pre AIR-21 exemption authority) based on the aircraft operator's willingness to pay. Traditional landing fees could be supplemented or replaced entirely by a system of fees that would let the market allocate aircraft operations per hour. Under all scenarios, FAA would maintain ultimate control of the maximum number of allowable flights at the airport based on safety and efficiency. During periods of high demand only those aircraft operators that value the use of the airport's runways most would use the runways. Other users could choose to operate during periods of lower demand or could choose to operate at less congested neighboring facilities (e.g., John F. Kennedy International Airport). Proponents of this approach have suggested that this type of congestion-based pricing policy would encourage the use of larger aircraft at LGA and would consequently increase the number of passengers that use the capacity constrained facility.

On a practical level, there are a number of ways in which a congestion pricing system could be established. For instance, a two-part tariff could be created, combining the traditional landing charge with a flat surcharge that could vary throughout the day. Alternatively a weight-based fee could be constructed which would encourage the use of larger aircraft during periods of high demand. Regardless of how the fee is constructed, it must be capable of bringing into balance airport capacity and demand.

2.) A Potential Congestion-Based Fee Approach

The PANYNJ has identified two versions of congestion pricing for consideration. A complete description of these is provided in the Appendix. When evaluating both versions of this option, commenters are asked to be mindful of their key characteristics.

Option A contemplates that the restrictions imposed by the HDR would remain in effect until 2007 and that the FAA would increase the number of slot exemptions under AIR-21. The PANYNJ would levy the same congestion fee on all aircraft operations (both landings and take-offs), including operations conducted under HDR authority, that occur during the Congested Period at LGA, except for a limited number of AIR-21 flights that would be exempted from the fee. The PANYNJ anticipates that the FAA would conduct a lottery (in the same manner as it conducted the initial AIR-21 slot exemption lottery in December 2000) to allocate three additional AIR-21 slot exemptions per hour for use for qualified AIR-21 operations. The congestion fee would be set to discourage the actual operation of flights beyond the hourly operations target. Each year thereafter, the FAA would conduct another lottery to allocate additional slot exemptions for qualified AIR-21 operations. Under this option, the PANYNJ expects that the congestion fee would range between $350-$700 for each arriving and departing flight. Associated annual revenues are estimated to range between $130-$260 million per year.

Option B differs from Option A in two ways. The first difference is that under Option B the PANYNJ contemplates that the FAA would gradually reduce the constraints imposed under *both* the HDR and the AIR-21 slot exemption lottery in conjunction with the

introduction of the congestion fee and in anticipation of the elimination of the HDR by 2007 as required by AIR-21. In addition to increasing the number of AIR-21 slot exemptions that could be allocated, as in Option A, the FAA would (i) annually increase the number of allocated HDR operations in each hour by a maximum of 5 percent using the rules established in the FAA's HDR regulations to allocate among the airlines the authority to conduct these additional operations, and (ii) revise the HDR to reduce or eliminate the current restrictions that limit the use of 14 commuter slots each hour to small aircraft, which, the PANYNJ indicates will improve the operating efficiency of LGA. Effective in 2007, when the HDR is eliminated, there would no longer be any administrative constraints on the permissible number of operations at LGA, but the congestion fee would remain in place and would continue to maintain a balance between demand and capacity at LGA.

The second difference between Option A and Option B is that under Option B, the PANYNJ would levy two different congestion fees: one congestion fee would be charged for all flights operating between LGA and any small hub or non-hub airport qualifying for AIR-21 service, as well as general aviation flights, and another, much higher congestion fee would be charged for all other aircraft operations. Under this option, the PANYNJ expects that the congestion fee for air carriers serving AIR-21 markets (and general aviation) to range between $350-$700 for each arriving and departing flight and a range of $700-$2,000 for all other arriving or departing aircraft. Associated annual revenues are estimated to range between $240-$550 million per year.

Under congestion pricing, the PANYNJ is also considering the desirability of exempting from the congestion fee certain operations that serve airports that qualify for AIR-21 small hub or non-hub service under 49 U.S.C. § 41716(a) and DOT Order 2000-4-11. Three potential approaches under consideration are to exempt (i) 80 operations (or a lower number that may be determined by PANYNJ to increase the overall operating efficiency of LGA) qualified under AIR-21 for small hub or non-hub service; (ii) all AIR-21 qualified operations serving small hub or non-hub airports within 300 miles of LGA, for example, given that passengers in markets within this distance have few connecting flight options; or (iii) a combination of these two approaches. The PANYNJ has also considered whether to exempt new entrant airlines from the congestion fee, but presently does not anticipate doing so because of concerns that such an exemption could disadvantage incumbent carriers vis-à-vis new entrant carriers.

The FAA is interested in receiving comments regarding the key characteristics of the procedure which the PANYNJ has identified for consideration and encourages, to the extent appropriate, variations on the PANYNJ approaches. Issues such as adequacy, effectiveness, ease of administration, and impact on air carriers and the traveling public should all be addressed. In particular, comments are solicited on whether the proposed range of fees will likely influence air carrier behavior and manage congestion and delay at LGA; whether the approach would maintain and/or expand service to small communities and foster new airline entry into the LGA market; and whether the approach provides for a smooth transition to 2007 when the HDR expires.

B. Auctioning of Landing and Take-Off Rights

1.) A Generalized Description of an Auction

Under this approach, the airport or the FAA would hold an auction for a specified number of landing and take-off rights. Each eligible aircraft operator would have the opportunity to participate in the auction. To ensure that air carriers could build and maintain reliable service patterns prior to the elimination of the HDR in 2007, the auction would be phased in over a number of years, with a fixed percentage of HDR slots and AIR-21 slot exemptions auctioned off each year. To ensure that air carrier competition remains vibrant at LGA and that all aircraft operators have an opportunity to participate in the auction, landing and take-off rights could also be re-auctioned periodically. For example, a staggered approach could require 25% of the available landing and take-off rights each year be re-auctioned, with each landing and take-off right valid for a period of 4 years. Auction "fees" could be considered as an addition to all other fees assessed at the airport. Alternatively, the airport could exempt the recipients of the auctioned landing and take-off rights from the current weight-based landing fees.

Comments are specifically requested on the various methods by which an auction could be constructed and the frequency of the auction. Similar to the congestion pricing option, it is anticipated that an auction, would generate revenue in excess of the airport's traditional rate base. There are several possible approaches to cap revenue to recover only the cost associated with operations affected by the auction. The two specific methods that are described here are examples. First, actual auction bids/payments could be scaled back proportionately to the ratio of airport cost to the aggregate of winning

bids. Second, rebates could be offered to new entrants and limited incumbents to ensure the promotion of air carrier competition and service to small communities.

2. A Potential Auction Based Approach

The PANYNJ has identified a hybrid procedure for consideration that combines both administrative procedures and an auction of a portion of operations at LGA. A complete description of this approach is provided in the Appendix. When evaluating this option, commenters are asked to be mindful of the key characteristics of its proposed application. These characteristics are summarized below:

- Airport reservations would replace HDR Slots and AIR-21 slot exemptions.
- Air carrier reservations would be allocated according to the following formula:
  - Each carrier given a baseline allocation of reservation of up to 20 reservations per day for use for service between LGA an any other destination permitted under the LGA Perimeter Rule.
  - 80 Reservations (allocated by lottery, auction, or a combination of these methods) reserved for carriers seeking to serve small communities.
  - 70 percent of the remaining reservations allocated to each carrier according to their enplaned market share.
  - Remaining reservations auctioned among competing carriers.

The PANYNJ suggests that this approach could be implemented in one of two ways:

Option A: Immediate replacement of all HDR slots and AIR-21 slot exemptions. Reservations would be reallocated every two years according to one of the four methods described above.

Option B: Four-year phase out of the existing HDR slots and AIR-21 slot exemptions. In the first year, airlines are guaranteed to receive at least 75 percent of their current HDR slots and AIR-21 slot exemptions through a baseline allocation. In the second year, airlines are guaranteed 50 percent; and in the third year 25 percent. In this scenario phase out would be completed in year four.

The Auction for reservations (excluding the auction proceeds for the 80 reservations set-aside for small communities) is estimated to yield additional annual revenues to the PANYNJ of approximately $60 million to $90 million for Option A and for Option B once it is fully implemented. Option B is estimated to yield additional revenues of approximately $18-$26 million in the first year, $35-$53 million in the second year, and $53-$79 million in the third year. These estimates assume auction prices in the range of $20,000 to $30,000 per Reservation per month.

The FAA is interested in receiving comments regarding the key characteristics of the procedures that the PANYNJ identified for consideration and encourages comments, to the extent appropriate, on variations of this approach. Issues such as adequacy, effectiveness, ease of administration, and impact on air carriers and the traveling public should all be addressed. In particular, comments are solicited on whether the relative distribution of reservations among the four potential allocation methods provide sufficient opportunity for service by new entrants and provide for the maintenance and/or expansion of service to small communities; how much revenue would be derived from the auction and if the suggested use of funds is appropriate (see discussion in the succeeding section of this notice). Finally, is the combination of administrative

procedures and market-based solutions appropriate or should there be greater reliance on a market mechanism to allocate reservations. For example, is it appropriate to allocate 70 percent of the remaining reservations based on air carrier business performance (i.e., enplaned market share) or should more of these reservations be included in those that are auctioned off after the baseline and service to small communities allocations have been made.

3. Collection And Use Of Revenue Derived From A Market-Based Approach

As noted previously, it is anticipated for a market-based approach to be effective in allocating scarce resources at LGA, the revenue generated would far exceed the amount collected by traditional airport charges. Furthermore, the specific market-based options that have been offered by PANYNJ for consideration have suggested that any market-based fee or auction payment would be in addition to the airport's traditional landing charges. The generation of revenue in excess of the airport's traditional cost base raises several policy questions for the FAA.

As noted above, a market-based approach has the potential to generate large sums of excess revenue beyond the airport's traditional rate base. What is the appropriate use of this additional revenue? In this circumstance, would there need to be specific limitations on use of the revenue generated by PANYNJ under a market-based approach?[2] Should the use of such funds be explicitly limited, as a part of the FAA's approval?

[2] At LGA, under current federal legislative authority, PANYNJ use of airport revenues is not subject to the general federal requirement to use airport-generated revenue only for

The PANYNJ has identified several possible uses for revenue derived under a market-based approach. For example, revenues could be used:

- to pay for projects that increase airport capacity in the local airport system or at other regional airports;
- to pay for expenses incurred for AIP-eligible (but not AIP-funded) noise mitigation projects, in order to reduce the burden of airport activity on nearby communities;
- to lease HDR slots at LGA from airlines, and to hold them in abeyance, in order to reduce demand;
- to advance the goals of AIR-21 to increase airline competition and small community air service; or
- periodically to rebate remaining proceeds to airlines operating at LGA based on the number of passenger enplanements at LGA during a defined period of time, in order to provide an incentive for airlines to increase the volume of passengers they carry without increasing the number of flights they operate from LGA (by up-gauging their fleet of aircraft and improving their load factors).

In addition to these options, the FAA has also identified some potential uses of the excess revenue that would be generated under a market-based approach. They include (1) encouraging the use of less congested facilities by offering rebates to aircraft operators; (2) creating a national/regional trust fund for capacity enhancement; (3) using excess

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airport purposes, and PANYNJ may use airport revenue to support the general obligations of the Authority.

revenue to encourage service to small communities. Several of these options are likely to require statutory authority and/or rulemaking.

The FAA is seeking comment on these suggested uses of funds and the desirability of showing that all capacity and efficiency actions have been taken.

II. Administrative Options

The FAA is currently considering three types of administrative options to allocate takeoff and landing rights at LGA. Further variations of each option are also be possible. The first option would encourage the use of larger aircraft at LGA. Three variations of this approach are discussed. The second option would replace the HDR with a new slot allocation rule that would streamline the slot allocation process that exists under the HDR. It would rationalize the pools of slots set-aside for small community service by consolidating existing HDR commuter and air carrier slots used for service to small hub and non-hub airports and AIR-21 slot exemptions allocated for that service into a single category and provide a limited withdrawal of air carrier slots for new entrants. The third option would repeal the current HDR and establish a new rule that would provide each carrier with potentially slightly lower percentage of its current slot base. There would be a limited withdrawal of slots that would be apportioned to three pools to be allocated by lottery: (1) for new entrants, (2) for small community service, and (3) for general distribution to all incumbent carriers.

In addition to the three options presented above, there are two administrative options that the FAA considered but declined to set forth for public comment. One of these options

would be to reduce the number of reservations provided per hour at LGA in the "Other" category. Currently, there are six operations permitted per hour at LGA in the "Other " category that are available for general aviation, charter operations and other non-scheduled operations. The FAA considered whether to reduce the number of reservations allocated under the "Other" category and add a corresponding number of AIR-21 operations per hour. However, the FAA believes it is important to ensure access for general aviation and other unscheduled operations. Therefore, the agency has decided against reduction of this already limited category of operations.

The FAA also considered whether the HDR should be changed to eliminate the authority to conduct extra sections of scheduled flights. Extra sections operate based on passenger demand and do not require an additional slot beyond the one required for the original scheduled flight. The Air Carrier Association of America, some new entrant airlines and others have said that by eliminating the authority for extra sections, capacity would be available for AIR-21 operations. The FAA has decided not to seek comment on eliminating the extra section authority in the HDR. While this might result in some opportunities for reallocation of operations, the FAA recognizes that the use of extra sections predates the adoption of the HDR and is a significant factor in accommodating passenger demand in certain markets during peak travel periods.

There have been allegations that extra section authority may be abused by airlines when the FAA is conducting air traffic management programs, e.g., that some carriers file additional flight plans solely for the purpose of obtaining better proposed times for air traffic clearance and then a later scheduled flight is substituted in the proposed "extra

section" time. The FAA has investigated these allegations. The FAA Air Traffic Control System Command Center routinely monitors proposed flights and has addressed this behavior at LGA and other airports during traffic management programs. The FAA does not find this to be an on-going practice that affects operations at LGA.

A. Encouraging the Use of Larger Aircraft

The first variation of this approach would involve the FAA administratively determining the minimum aircraft size operating at LGA. By establishing a minimum size, the amount of airport congestion and delay experienced at the airport could be controlled, while simultaneously increasing the throughput of passengers at LGA. Provision for access by air carriers serving small communities would be achieved by exempting a specified number of operations, reserved for serving small and non-hub airports, from the minimum aircraft size requirement. A transition period would be necessary to determine the appropriate minimum aircraft size that would balance the demand for and supply of airfield capacity.

For example, the FAA would phase-out the HDR over a period of time, perhaps four years. However, a shorter phase-out would also be considered if the number of slots that would be phased-out under a four-year period would not produce the intended benefits in a timely manner. In the first year, the FAA would withdraw 25 percent of the slots and slot exemptions either randomly or using the slot withdrawal priority number during the congested periods. These withdrawn slots and slot exemptions would then be made available for use based on aircraft size. In the succeeding years, additional slots and slot

exemptions would be withdrawn. All slots and slot exemptions could be allocated based on a procedure such as the one described below, which gives priority to larger aircraft.

One possible approach for allocating by aircraft size would be for the FAA to invite air carriers to submit a series of hourly flight schedules for flights to occur over the next six months according to aircraft size for those hours during the period of congestion. The congestion period would run from 7:00 a.m. to 21:59 p.m. on weekdays, and more limited time periods on the weekends. Air carriers would first be asked to submit to the FAA hourly flight schedules for aircraft serving LGA with 150 or more seats. Air carriers with the largest aircraft, would be given priority by the FAA in granting authority to implement their schedules. In the event that there still exists excess airfield capacity during the congested period, air carriers would again be invited to submit hourly flights schedules for aircraft serving LGA with 100 – 149 seats. To the extent that excess capacity still exists, the remaining landing and takeoff rights would be allocated among all qualified air carriers serving LGA. The allocation, when complete, would be effective for approximately six months consistent with summer and winter scheduling seasons. Successive six-month schedules would be authorized by the FAA using a similar process.

To ensure that service to small and non-hub airports be maintained, an initial baseline allocation of 150 operations could be guaranteed to air carriers serving small and non-hub airports. This baseline allocation would be done via lottery and reallocated every 2 years. Air carriers would be free to determine which small communities they would serve and the frequency of service. The baseline allocation of 150 slots seeks to guarantee a minimum amount of service to small communities than is greater than provided under the

current lottery. Air carriers will be able to supplement this baseline allocation with operations received in other allocations. Under this option, the FAA is also considering as an alternative to creating a small community set-aside, the desirability of establishing a baseline allocation for all air carriers serving LGA.

It is possible that over a period of time, for example, five years, the FAA would be able establish permanent minimum aircraft size requirements based on experience from the semi-annual schedule submission process. Once a permanent solution is established, air carrier access would be determined solely by compliance with the minimum aircraft size requirement.

The second variation to encourage the use of larger aircraft would be to maintain the HDR and AIR-21 allocations and eliminate the use of commuter aircraft (i.e., jets aircraft with 55 seats or less and turboprops with 74 seats or less) in air carrier slots. There are approximately 80 air carrier slots that are operated with commuter aircraft. Under this variation, carriers would decide whether to continue this service using a commuter slot, to continue this service with a large aircraft or to eliminate the service entirely. Regardless of which course is chosen by the carriers, it is anticipated that there will be an increase in the average size of aircraft operating at LGA.

The third variation to encourage the use of larger aircraft would be to maintain the current HDR and AIR 21 allocations and eliminate the size limitation of the commuter category (merge the air carrier and commuter categories). This would provide flexibility to carriers with commuter slot holdings, who have the ability to use larger aircraft to

serve the same community or change the service to a larger market. Presently, most commuter slots are held by incumbent airlines or airline affiliates that are the largest slot holders at the airport. This variation/option could reduce service to small communities because of potentially greater economic returns in larger, high-yield markets. However, if it is necessary to ensure some level of service to small communities beyond that provided by codifying the AIR-21 operations, a set-aside for small communities could be incorporated.

B. Establish a Pool of Slots for Small Community Service and Withdraw Slots at Regular Intervals for Reallocation to New Entrants

In general, this option would create a slot allocation rule to survive post-2007. It would retain the basic framework of the existing HDR, but would simplify and rationalize the pool of slots that is set aside for small community service by consolidating into a single category the HDR commuter slots serving small communities, the AIR-21 exemption slots allocated to serve small hub and nonhub airports, and the air carrier slots used for small community service. As a result, slots dedicated to service to small communities would be set at a level that accommodates the current level of service. The number of slots in this new category would not increase in the future. Continuing access for new entrant operations would be assured by a periodic withdrawal and reallocation of a small number of slots from the air carrier category to new entrant carriers in order to provide competition and avoid the virtual denial of new access experienced under the buy-sell rule.

This option would maintain certain logistical aspects of the HDR for purposes of continuity, such as the same slot withdrawal numbers, the withdrawal priority system, and the minimum slot usage requirement and slot trading. The AIR-21 slot exemptions would be codified and added to the HDR slot totals. It is noted that this option would not disturb the "Other" category of slots used for general aviation and other non-scheduled operations. Instead of the commuter slot category, a new category for operations serving small communities would be established and would be comprised of the current HDR commuter slots serving small communities, air carrier slots serving small communities and AIR 21 slot exemptions serving small communities. As a result, there would be approximately 260 slots in the category for small community service with no aircraft size limitation. This encompasses the current level of service to small communities. The remaining commuter slots, which served medium/large communities, would move to the air carrier category with no aircraft size limitation.

The rule would create a continuing mechanism that would provide for a limited withdrawal (3% or less every year, or two years) from the air carrier HDR slot category for new entrant service. The withdrawal would target individual hours to ensure a distribution throughout the day. A lottery process would be used to reallocate the withdrawn slots to new entrants. If demand by new entrants is less than the number of slots withdrawn, each unused slot would be returned to the incumbent holder. Slots used for new entrant service, small community service and to support international obligations would not be subject to the withdrawal.

Slots would have expiration dates and upon expiration (for instance every two years) the FAA would reallocate the slots using the following process:

1. Carriers would all receive a base, which is their current number of slots held today up to a maximum of 20.
2. Carriers that hold 21-100 slots would receive 98 % (or some percentage) of that portion of operations.
3. Carriers that hold over 100 slots would receive 95% (or some percentage) of that portion of operations.[3]
4. Using the above slot pool, the FAA would conduct the three following lotteries: (a) new entrant; (b) small community service; (c) general distribution. The general distribution lottery would be open to all participants and could result in additiona growth by new entrants, small community service, or other incumbents.

Slots provided to foreign carriers in response to international obligations would need to be excluded from the withdrawal provisions. The FAA could apportion the slots available for each lottery based on demand or other policy considerations. Potentially, some of the slots that large incumbent carriers lose could be recouped by them through the small community service lottery or the general distribution lottery. This option could continue the existing ability to buy and sell slots or, alternatively, incorporate a ban on

[3] Using the percentages given in steps 1 and 2, preliminary analysis shows that a slot pool of approximately 35 slots would be available for reallocation.

sales and leases and limit slot transfers to one-for-one trades as discussed in the previous option.

Commenters are requested to consider the effectiveness, administrative simplicity, transitional issues, and fairness of these administrative approaches.

LEGAL CONSIDERATIONS

This notice proposes both administrative and market-based pricing options to manage airport congestion and delays, which raise complex statutory, regulatory, and policy issues as well as difficult issues with respect to our international aviation obligations. Federal laws, regulations, and U.S. international obligations presently in place may restrict the types of alternative fee structures airports may adopt, especially if higher/lower fees deviate significantly from traditional cost accounting and cost-allocation methodologies. Additionally, requirements that grant-funded airports be available for public use on fair and reasonable terms and without unjust discrimination could continue to make it difficult for airports to design workable market-based pricing regimes.

We mention these legal issues and factors as background and, for purposes of this notice, request that commenters set aside consideration of the current statutory, regulatory, or international authorities. We seek suggestions on effective, comprehensive solutions that represent the best public policy for controlling congestion at LGA. While we will consider pertinent legal issues in any policy options ultimately put forward for adoption,

Lastly, it has been argued that current buy/sell provisions of HDR have had the unintended effect of limiting competition and new entrant access. One variation that could be incorporated in this option is the elimination of one-way trades, i.e., a prohibition on the buying or leasing of slots. Carriers could only trade slots on a one-for-one basis at the same airport. While this would not prevent carriers from conducting a two-way trade that also involved consideration, it would prevent a carrier or other entity from retaining the long-term allocation of a slot that it does not operate.

C. Reallocation of Slots under a Replacement Rule

In general, the HDR would be repealed and replaced by a new rule that would establish and periodically allocate new hourly operational limitations. It would also consolidate the current number of HDR slots, pre AIR-21 slot exemptions to new entrants, and AIR-21 slot exemptions. Most slots would be reallocated to carriers currently holding them, in order to provide a stable and continuing base for current operations. A percentage of slots (examples are provided below) would be held back from larger incumbent carriers at the time of reallocation to provide a pool of slots for allocation by lottery to three separate categories: (1) new entrants; (2) small community service; and (3) limited redistribution open to all incumbents. This option protects the investment made in facilities by carriers and avoids major disruption in service because of slot reallocation. The periodic withdrawal and lottery of slots for new entrants and small community service could permit a gradual increase in slots available for these operations in the future. Over time, however, slots used by the large incumbent carriers for service in major markets could gradually be reduced, as slots were withdrawn for reallocation to new entrants and service to small communities.

perceived legal impediments should not unduly limit comments in response to this request. Accordingly, we will defer consideration of current legal factors.

With regard to the AIR-21 slot lottery allocation and procedures, the FAA, pursuant to its broad authority under Title 49 of the United States Code (U.S.C.), Subtitle VII, to regulate and control the use of the navigable airspace of the United States, proposes to extend the allocation of slot exemptions pursuant to the December 4, 2000, lottery and to conduct a limited second lottery for available capacity. 49 U.S.C. 40103 authorizes the agency to develop plans for and to formulate policy with respect to the use of navigable airspace and to assign by rule, regulation, or order the use of navigable airspace under such terms, conditions, and limitations as may be deemed necessary in order to ensure the safety of aircraft and the efficient utilization of the navigable airspace. Also, under section 40103, the agency is further authorized and directed to prescribe air traffic rules and regulations governing the efficient utilization of the navigable airspace.

On April 5, 2000, the "Wendell H. Ford Aviation Investment and Reform Act for the 21st Century" ("AIR-21") was enacted. Section 231 of AIR-21 significantly amended 49 U.S.C. § 41714 and included new provisions codified at 49 U.S.C. §§ 41716, 41717, and 41718. These provisions enabled air carriers meeting specified criteria to obtain new slot exemptions at New York's LGA Airport and John F. Kennedy International Airport, Chicago's O'Hare International Airport and Washington DC's Ronald Reagan Washington National Airport. As a result of this legislation, the Department of Transportation (Department) issued eight orders establishing procedures for the processing of various applications for exemptions authorized by the statute.

Again, the agency notes that Section 231 of AIR-21, 49 U.S.C. § 41715(b)(1) expressly provides that the provisions for slot exemptions are not to affect the FAA's authority for safety and the movement of air traffic. The reallocation of certain exemption times by the lottery procedures described in this Notice is based on the FAA's statutory authority and does not rescind the exemptions issued by the Department under Orders 2000-4-10[4] and 2000-4-11[5]. As provided in those orders, carriers that have filed the exemption

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[4] Order 2000-4-10 implements the provisions of 49 U.S.C. § 41716(b), which states in pertinent part, that exemptions must be granted to any new entrant or limited incumbent airline using Stage 3 aircraft that proposes "...to provide air transportation to or from LaGuardia or John F. Kennedy International Airport if the number of slot exemptions granted under this subsection to such air carrier with respect to such airport when added to the slots and slot exemptions held by such air carrier with respect to such airport does not exceed 20." Applications submitted under this provision must identify the airports to be served and the time requested.

[5] Specifically, Order 2000-4-11 implements 49 U.S.C. 41716(a), which provides in pertinent part that an exemption must be granted to any airline using Stage 3 aircraft with less than 71 seats that proposes to provide nonstop service between LaGuardia and an airport that was designated as a small hub or non-hub airport in 1997, under certain conditions. The exemption must be granted if: (1) the airline was not providing such nonstop service between the small hub or non-hub airport and LaGuardia Airport during the week of November 1, 1999; or (2) the proposed service between the small hub or non-hub and LaGuardia, exceeds the number of flights provided between such airports during the week of November 1, 1999; or (3) if the air transportation pursuant to the exemption would be provided with a regional jet as replacement of turboprop service that was being provided during the week of November 1, 1999.

According to AIR-21 and the Department's Orders, air carriers meeting the statutory tests delineated above automatically receive blanket approval for slot exemptions, provided that they certify in accordance with 14 CFR 302.4(b) that they meet each and every one of the statutory criteria. The certification must state the communities and airport to be served, that the airport was designated a small hub or non-hub airport as of 1997, that the aircraft used to provide the service have fewer than 71 seats, that the aircraft are Stage 3 compliant, and the planned effective dates. Carriers must also certify that the proposed service represents new service, additional frequencies, or regional jet service that has been upgraded from turboprop service when compared to service for the week of November 1, 1999. In addition, carriers must state the number of slot exemptions and the times needed to provide the service.

certifications also need to obtain an allocation of slot exemption times from the FAA. The limiting and reallocation of these exemption slots is in recognition that it is not possible to add an unlimited number of new operations at LGA, especially during peak hours, even if those operations would otherwise qualify for exemptions under AIR-21.

Lastly, section 93.225 of Title 14 of the Code of Federal Regulations sets forth the process for slot lotteries under the High Density Rule. The process described in the regulations is similar to the process described herein and allows for special conditions to be included when circumstances warrant special consideration.

Issued in Washington, DC. on JUN - 7 2001

Louise Maillett,
Acting Assistant Administrator for Policy, Planning, and International Aviation

Appendix [6]

Demand Management Options Submitted to FAA for Consideration by the Port Authority of New York and New Jersey

DEMAND MANAGEMENT ALTERNATIVES FOR LaGUARDIA AIRPORT

The allowable number of aircraft operations at LaGuardia Airport ("LGA") is currently limited by two primary administrative mechanisms. First, there are a limited number of slots and slot exemptions authorized under the High Density Rule ("HDR slots"). The HDR slots were established in 1968 to reduce delays at LGA and several other highly congested airports. *See* 14 CFR part 93, subpart K. Second, following enactment of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century ("AIR-21"), which exempted certain aircraft operations at LGA from the High Density Rule and which calls for the abolition of the High Density Rule slots at LGA by 2007, the Federal Aviation Administration ("FAA") authorized only a limited number of AIR-21 slot exemptions on an interim basis and used a lottery to allocate these exemptions among eligible airlines. *See* 65 FR 75765 [December 4, 2000] *et seq.* These limits on AIR-21 slot exemptions are currently scheduled to expire on September 15, 2001.

In conjunction with the U.S. Department of Transportation ("DOT") and the FAA, the Port Authority of New York and New Jersey ("PANYNJ") has been considering a variety of alternative market-based demand management programs that might be implemented at LGA when the existing limits on AIR-21 slot exemptions expire. The PANYNJ's principal goal in exploring various demand management alternatives has

[6] The FAA has inserted in square brackets dates associated with PANYNJ's reference to various Federal Register Notices. These changes were made to comply with Federal Register formatting standards.

been to find ways to use market forces to bring the level of demand for use of the LGA airfield into alignment with its limited capacity, and thereby improve airline schedule reliability, reduce flight cancellations and avoid excessive delays. The PANYNJ strongly believes that the millions of passengers who use LGA each year should not suffer from gridlock on the airfield or in the air. At the same time, the PANYNJ respects the twin objectives of AIR-21: to facilitate the entry of new airlines to the LGA market, thereby promoting airline competition, and to enhance service between LGA and small hub and non-hub destinations.

The PANYNJ is confident that the implementation of a market-based demand management program at LGA will encourage the efficient use of the airport's scarce airfield capacity, thereby allowing continued growth in the airport's passenger volume, by providing incentives to use larger aircraft, while promoting competition and maintaining reasonable stability in the air services provided at LGA. The PANYNJ expects that an ancillary benefit to the traveling public of the use of an effective market-based demand management program will be the availability of new revenue that can be used to encourage development of increased airport capacity in the region. In developing effective market-based demand management programs for consideration at LGA, the precise roles to be played in implementing such plans by the PANYNJ, as the local airport proprietor, and the FAA and DOT as the federal regulators, remain to be determined. The PANYNJ's firm belief, however, is that the PANYNJ together with the FAA and DOT have the combined statutory authority to implement an effective market-based demand management program at LGA.

The FAA and DOT have encouraged the PANYNJ to develop and submit for public comment two alternative sets of potential demand management alternatives for LGA, in anticipation of the expiration of the current limits on AIR-21 slot exemptions (currently scheduled for September 15, 2001) and the elimination of all HDR slots no later than 2007. These alternatives are the focus of this document. The PANYNJ expects to select a demand management program for LGA after carefully reviewing the public comments on the programs it is currently considering, and after consulting with the FAA and DOT, the airlines operating at LGA, and other affected constituencies. The PANYNJ has not yet determined what demand management approach it will favor, and invites public comment on both the general structures and specific parameters of the alternatives that are described below. The PANYNJ anticipates that it (and the FAA and DOT) will provide another opportunity for public comment before a demand management program is implemented at LGA.

The first set of alternatives the PANYNJ is studying would use congestion pricing in combination with administrative constraints to keep demand in alignment with the limited airfield capacity at LGA. These congestion pricing alternatives are described in two options. Under Option A, the HDR would remain in effect until 2007, but over time the FAA would expand the current number of slot exemptions that can be used for operations qualifying under AIR-21. This would allow only AIR-21 service to expand, but would create the potential for an excessive number of aircraft operations seeking to use LGA's airfield. To bring the level of demand arising from both HDR and AIR-21 service into alignment with airfield capacity, the PANYNJ would levy a congestion fee on all aircraft landing or taking-off during a defined "congested period" at LGA, except perhaps for a limited number of daily flights between small hub and non-hub airports

and LGA that would be given an exemption. Under Option B, the FAA would simultaneously phase out the limits imposed under both the HDR and AIR-21, by separately allowing the numbers of operations permitted under the HDR and under AIR-21 to increase, and congestion pricing would be used to align the level of demand to provide these services with the limited airfield capacity at LGA.

The second set of alternatives under consideration by the PANYNJ would use a combination of administrative mechanisms and auctions to allocate time-specific "reservations" that would be required in order to conduct an aircraft operation at LGA. These alternatives are also described in two options, but both options would include four groups of reservations: (i) each airline would be allocated up to 20 reservations each day (subject to an aggregate limit of 300); (ii) 80 reservations each day would be set aside for use only for service to or from small hub and non-hub airports, and would be allocated by a lottery, an auction, or a combination of these methods; (iii) 70 percent, or a lesser share, of the remaining reservations would be allocated among the airlines serving LGA in proportion to each airline's share of the airport's total passenger volume; and (iv) the remaining reservations would be allocated among all airlines by auction and would not be limited to use for any particular type of service. The main difference between the two options concerns the timing of elimination of the current system of HDR slots. Under Option A the HDR slots would be eliminated at the outset, while under Option B the current system of HDR slots would in effect be phased out over four years.

The remainder of this document, submitted to the FAA and DOT by the PANYNJ, has three sections. Section 1 summarizes the factual and procedural background of the

PANYNJ's work on demand management programs for LGA. This section describes the PANYNJ airport system, and explains the capacity constraints and demand management problem at LGA. Section 1 concludes with a brief description of various approaches that were reviewed during the process of developing the two sets of alternatives that are presently under consideration by the PANYNJ. Sections 2 and 3, respectively, detail the essential features of the congestion pricing and auction alternatives the PANYNJ is currently considering. The DOT, FAA, and PANYNJ all seek public comment on these possible long-term solutions to the demand management problem at LGA. The commitment of all stakeholders to constructive dialogue will yield the optimal solution for airlines, local communities and air travelers.

1. BACKGROUND. Since 1968, the number of aircraft operations at LGA has been managed primarily through administrative mechanisms. The DOT, FAA, and PANYNJ have been exploring ways in which market-based mechanisms could best be used in the future to manage demand at LGA, while achieving the goals of AIR-21 to facilitate greater competition in scheduled air service, and to permit new service between small hub or non-hub airports and LGA.

1.1 DESCRIPTION OF THE PANYNJ AIRPORT SYSTEM. The PANYNJ operates a four-airport system comprised of LaGuardia, John F. Kennedy International, Newark International, and Teterboro Airports. Each of these airports plays a different role, targeted for different users and designed to facilitate different types of operations. LaGuardia Airport, just seven miles from midtown Manhattan, is the airport offering frequent, short-haul service to meet the needs of the business community. For many years, the PANYNJ has implemented a perimeter rule at LGA (limiting scheduled flights

to destinations no more than 1500 miles away) and imposed minimum landing fees on non-scheduled aircraft operators. John F. Kennedy International Airport ("JFK") has for many years served as an international gateway, designed to meet the needs of the long-haul traveler, but with the capacity to accommodate additional domestic flights as well. With the recent introduction of new domestic service and the scheduled completion of the PANYNJ's AirTrain rail service in 2003, JFK is expected to accommodate an increasing share of the region's domestic and origin-destination traffic in the coming years. Newark International Airport combines frequent service to business centers with growing international traffic, and will also benefit from improved ground access. Teterboro Airport is the key reliever airport for the immediate region, serving the needs of corporate and general aviation. These four airports are intensively used, with over 90 million passengers, 2.8 million tons of cargo, and over 1.4 million aircraft movements passing through them each year. The PANYNJ's four airports complement other aviation facilities within the New York/New Jersey region that are capable of providing service to some of the same markets served by the PANYNJ's airport system.

1.2 THE CAPACITY CONSTRAINTS AND DEMAND MANAGEMENT PROBLEM AT LAGUARDIA AIRPORT. A key operational challenge at LGA is to maintain a balance between flight operations and the limited physical capacity of the airfield. As the FAA has previously found, "LaGuardia Airport simply does not have the capacity for the unlimited addition of new flights." 65 FR 75768 (Dec[ember] 4, 2000). LGA is small. It consists of only 680 acres. It is surrounded by Flushing Bay on one side, a major arterial highway on the other, and dense residential neighborhoods. LGA's two 7,000-foot runways are perpendicular and intersect one another, which means that arriving and departing flights must be carefully timed and synchronized. The PANYNJ has been

making and continues to plan capital improvements to handle larger aircraft at LGA, so that the physical infrastructure is in place to serve more passengers without increasing the numbers of flights. However, LGA does not have the physical space to add runways to handle additional numbers of operations.

In the first seven months after AIR-21 was enacted on April 5, 2000, airlines sought to schedule more than 600 new flights a day at LGA, even though during the previous 18 months LGA actually handled fewer than 1000 flights each day on average, but had experienced serious problems of congestion and delay. As of November 1, 2000, about 300 of those new flights had begun operations. The immediate result was greatly increased levels of flight delay at LGA, which the FAA has previously described in some detail. *See* 65 FR 69127[November 15,2000]; 65 FR 75766 [December 4,2000]. The FAA found that "[t]his increasing level of congestion and delay makes carrier schedules impossible to meet, frustrates passenger travel plans, and places an unnecessary strain on carrier ground operations and on air traffic control services." 65 FR 69128 [November 15,2000]. As an interim solution, the FAA adopted a limit on the number of AIR-21 slot exemptions that could be used and allocated them by a lottery in order to achieve a limit of 75 scheduled operations per hour at LGA. 65 FR 75770 [December 4, 2000]. The FAA found that "[t]he limit of 75 scheduled operations per hour would limit daily and hourly demand on airport facilities and the air traffic control system to a number of flights that can be accommodated, at least in good weather conditions." 65 FR 69218 (sic 69128) [November 15, 2000]. The FAA imposed limits on AIR-21 slot exemptions and conducted its lottery in December 2000 as an interim step, in order to provide time to develop a long-term mechanism to prevent undue congestion at LGA. 65 FR 75769 [December 4,2000]. The FAA's limits on the number of AIR-21 slot exemptions that can

be used took effect on January 31, 2001, and caused a significant reduction in the volume of operations and resulting levels of delay and flight cancellations at LGA. Nevertheless, LGA has remained among the most highly congested and delay prone airports in the nation.

Because the physical capacity of the airfield at LGA has been reached, the number of flights at LGA during current periods of congestion cannot be raised without re-introducing the especially high levels of flight delay and cancellations that plagued LGA last year and caused serious problems throughout the nation's aviation system. As a result, methods for managing the level of demand so that it matches available capacity must be ready to put in place when the FAA's current limits on AIR-21 slot exemptions expire.

1.3 DEVELOPMENT OF THE ALTERNATIVES PRESENTED BELOW.

1.3.1 Focus on Market-based Solutions. The PANYNJ has considered many approaches to managing demand at LGA, including the use of new systems of administrative controls with no market-based features. However, any purely administrative system of managing demand will almost inevitably display the characteristics that have led to persistent criticism of the system of HDR slots that has existed since 1968. Purely administrative methods for allocating capacity are generally less efficient and less responsive to market conditions than economic allocation methods. Efficient, economic allocation methods can be augmented with administrative measures, exemptions or subsidies to address competing policy goals. With encouragement from the FAA and DOT, the PANYNJ has therefore been particularly interested in exploring ways of using market forces to achieve the most efficient use of the limited capacity at

LGA consistent with its overall goals and objectives. Two general types of economic demand management tools are available under these circumstances.

The first is congestion pricing. The logic of congestion pricing is to use price to bring the level of demand for use of the airfield at LGA into alignment with its limited capacity. Under a pure form of congestion pricing, the market alone would determine which flights are operated. Congestion pricing can be combined, however, with administrative constraints on allowable operations. Congestion pricing has the advantage of promoting efficient use of scarce capacity at LGA. Under a congestion pricing program, the PANYNJ would raise the price charged to aircraft operators for use of the airfield during congested periods, and the demand for use of the airfield would adjust to the congestion price. The new fee would be set with an expectation that demand would align with capacity. However, if the resulting number of operations turned out to be substantially higher or lower than the capacity of LGA, the congestion price would be adjusted accordingly.

The second economic demand management tool available at LGA is to use an auction to allocate a fixed number of allowable operations among competing airlines. Under a pure auction approach, the allowable number of aircraft operations would be fixed to match the limited airfield capacity at LGA, and the airlines would establish the market price for each allowable operation through an auction. An auction would be expected to improve the efficiency of use of the airfield by allocating the allowable operations to the bidders that can make the most productive use of the opportunity to use the airfield at LGA. Auctions can effectively be combined with administrative allocations or subsidies funded with auction proceeds to achieve desired policy objectives.

1.3.2 Development of Congestion Pricing Alternatives. Congestion pricing at LGA would necessarily have a different character than the forms of peak-hour pricing that have been considered at other airports. Some airports have a few hours of peak demand each day, and might be able to use "peak-hour" pricing to encourage scheduled and unscheduled aircraft operations to move to less congested times. At LGA, in contrast, the demand for aircraft operations exceeds available capacity for almost the entire day on weekdays. Adopting a "peak-hour" price for a few hours a day in order to shift operations to other times would not solve the problem. Shifting flights to the late night or early morning hours is not a desirable alternative, due to lack of market demand for service at those times and concern about adverse noise impacts on the surrounding residential neighborhoods. Since the airfield capacity of LGA cannot be significantly increased, this means that a pricing scheme cannot succeed as a demand management tool at LGA unless it can keep demand in alignment with capacity throughout the entire day. The PANYNJ has been exploring the possible parameters of such a congestion pricing approach.

The PANYNJ determined early in its examination of alternatives that a congestion price which was limited to the recovery of the airfield's capital costs and operating expenses would not be adequate to achieve the goal of aligning demand with capacity. Accordingly, the PANYNJ has focused its attention on congestion pricing alternatives that are not based on the recovery of the airfield's historical costs and operating expenses. The PANYNJ considered the potential effects of the immediate elimination of the operational limits imposed by the HDR slots, coupled with the use of a congestion fee alone to bring the level of demand for use of the airfield at LGA into line with its limited capacity. The experience during the fall of 2000, when the airlines rushed to secure

hundreds of AIR-21 slot exemptions, suggests that sudden removal of all operational limits would again produce a tremendous surge in aircraft operations. A congestion fee would need to be very high to counteract this surge, and bring demand back in line with capacity. This approach would not be a good way to achieve the PANYNJ's overall goals and objectives. The PANYNJ has, therefore, focused more attention on ways to combine a congestion fee with a gradual elimination of the constraints on HDR and AIR-21 operations imposed by the FAA.

In exploring such an approach, a range of possible targets for operations during periods of congestion at LGA has been considered. The tradeoffs here are real. With fewer operations during congested periods, delay will be reduced, schedules will be more reliable, and the burden on air traffic control will be more manageable. However, aiming for too low an operations target risks not making full use of LGA's capacity, and making it more difficult for all market segments to receive reasonable levels of access to LGA. In the opposite direction, aiming for a higher target permits more flights, making it easier to achieve the AIR-21 goals of facilitating entry by additional airlines and increasing service to smaller airports. But too high a target would result in a renewed increase in flight delays and cancellations, disrupting the operations of the airlines that AIR-21 seeks to foster, and could unreasonably tax the capacity of air traffic control. The problem is further complicated by the fact that the effective capacity of LGA's airfield is significantly lower under Instrument Flight Rules ("IFR") and certain wind conditions than it is in good weather under Visual Flight Rules ("VFR") with favorable winds. Lower airfield capacity conditions often occur at LGA, and if the target level of operations is set too high, the frequency of gridlocked operations will be unacceptable to the PANYNJ and the traveling public.

The PANYNJ has also considered whether the same congestion fee should apply to all flights, or whether certain kinds of flights should be exempted or pay a lower congestion fee. Once again, there are inevitable tradeoffs. Exempting certain flights means that some of the economic benefits of promoting efficient use of limited capacity at LGA will be lost, while applying the fee to all operations means that uneconomic, but socially desirable service may not be available.

The alternative congestion fee options described in Section 2 below reflect these and related considerations.

1.3.3 Development of Auction Alternatives. The PANYNJ also considered a variety of ways in which auction mechanisms might be used to manage demand at LGA. In contrast to congestion pricing alternatives where prices are established with the goal of producing a target level of aircraft operations, in an auction the number of permitted aircraft operations is established in advance, and airport users set at auction the price for permission to operate at the airport.

Auctions are used to allocate resources and transfer asset rights in many industries, including utilities and telecommunications. For example, the Federal Communications Commission has been using auctions to allocate spectrum licenses for wireless communications. Auctions have proven to be effective in circumstances where demand for a resource is much greater than available finite capacity, price setting is uncertain, and there is a goal of fostering increased competition. Properly structured auctions can result in significantly increased competition among service providers and lower costs to consumers.

The PANYNJ explored the possibility of allocating all available capacity at LGA through a single auction. Although a pure auction might achieve a higher degree of economic

efficiency than the mixed allocation and auction approaches set forth in Section 3 below, it may not perform as well in achieving the AIR-21 goals of access to new entrant airlines and service to small communities. Additionally, a pure auction of all available capacity at LGA has the potential to be unduly disruptive to the air services currently provided to the traveling public and to services by airlines with lesser financial capacity. The PANYNJ has also been concerned that an auction of all available capacity at LGA might add unduly to airline costs and potentially could translate into increased average air fares to and from the New York and New Jersey areas, especially given the absence of experience with auctions among airport users and the resultant uncertainty about the prices that might be paid at auction.

The PANYNJ therefore explored a wide variety of ways to smooth the transition from the current system of inflexible administrative controls to a new market-based auction approach. The results of this analysis are reflected in the two auction options set forth below for comment.

1.3.4 Use of Congestion Fee or Auction Proceeds. From the start, the PANYNJ recognized that the primary purpose of implementing an economic demand management tool such as a congestion fee or an auction is to allocate the scarce resources available at LGA efficiently, not to generate additional revenue to the PANYNJ. The PANYNJ also concluded that it is appropriate to maintain the existing weight-based landing fee, as the time-tested way to recover current LGA airfield operating and capital costs.

The PANYNJ has considered a variety of possible uses for proceeds from a congestion fee or an auction. The options considered include using the additional revenues:

(i) to pay for projects that increase airport capacity in the local airport system or at other regional airports, including new physical infrastructure and technological improvements that could increase airfield capacity as well as facilities and technologies that might more efficiently guide aircraft to and from an airport;

(ii) to pay for expenses incurred for AIP-eligible (but not AIP-funded) noise mitigation projects, in order to reduce the burden of airport activity on nearby communities;

(iii) to lease HDR slots at LGA from airlines, and to hold them in abeyance, in order to reduce the level of demand;

(iv) to advance the goals of AIR-21 of increased airline competition and small community air service; or

(v) periodically to rebate remaining proceeds to airlines operating at LGA based on the number of passenger enplanements at LGA during a defined period of time, in order to provide an incentive for airlines to increase the volume of passengers they carry without increasing the number of flights they operate from LGA (by up-gauging their fleet of aircraft and improving their load factors).

These possible uses of demand management revenues remain under consideration by the PANYNJ.

2. CONGESTION PRICING.

INTRODUCTION AND OVERVIEW. Reflecting its concern that an immediate abolition of the operational limits imposed by the FAA under the HDR and AIR-21 would be ill-advised, the PANYNJ has been exploring how congestion pricing could be combined with phased increases in the number of legally authorized operations to improve the efficiency of use of the airfield at LGA without reintroducing higher levels of delay.

The logic of this approach is, over time, to have the FAA reduce its administrative constraints by increasing the number of operations that would be legally permissible under the HDR, AIR-21, or both, and to substitute market forces by charging a Congestion Fee (in addition to the existing landing fee) for all aircraft operations during a defined Congested Period. The Congestion Fee would be designed to align the level of demand with limited airfield capacity, and the intended overall impact would be to shift toward more productive use of the airfield while maintaining approximately the same overall level of operational activity that has been observed since the AIR-21 lottery took effect.

The Congestion Fee alternative is described below in two possible forms, Option A and Option B.

Option A contemplates that the restrictions imposed by the HDR would remain in effect until 2007 and that the FAA would only increase the number of slot exemptions under AIR-21 that could be used. Under this Option, the PANYNJ anticipates that before it would implement the Congestion Fee, the FAA would conduct a lottery (in the same manner as it conducted the initial AIR-21 slot exemption lottery in December 2000) to allocate three additional AIR-21 slot exemptions per hour for use for qualified AIR-21 operations. Each year thereafter, the FAA would conduct another lottery to allocate additional slot exemptions for qualified AIR-21 operations. The PANYNJ would levy the same Congestion Fee on all aircraft operations (both landings and take-offs), including operations conducted under HDR authority, that occur during the Congested Period at LGA, except for a limited number of AIR-21 flights that might be exempted from the Fee.

Option B differs from Option A in two principal ways.

The first difference is that under Option B the PANYNJ contemplates that the FAA would gradually reduce the constraints imposed under *both* the HDR and the AIR-21 slot exemption lottery in conjunction with the introduction of the Congestion Fee and in anticipation of the elimination of the HDR by 2007 as required by AIR-21. In addition to increasing the number of AIR-21 slot exemptions that could be used, as in Option A, the FAA would (i) annually increase the number of allowable HDR operations in each hour by a maximum of 5 percent using the rules established in the FAA's HDR regulations to allocate among the airlines the authority to conduct these additional operations, and (ii) revise the HDR to reduce or eliminate the current restrictions that limit the use of 14 "commuter slots" each hour to small aircraft, to improve the operating efficiency of LGA. Effective in 2007, when the HDR is eliminated, there would no longer be any administrative constraints on the permissible number of operations at LGA, but the Congestion Fee would remain in place and would continue to maintain a balance between demand and capacity at LGA.

The second difference between Option A and Option B is that under Option B, the PANYNJ would levy two different Congestion Fees: one Congestion Fee would be charged for all flights operating between LGA and any small hub or non-hub airport qualifying for AIR-21 service, as well as general aviation flights, and another, much higher Congestion Fee would be charged for all other aircraft operations.

PROVISIONS COMMON TO BOTH OPTION A AND OPTION B

2.1 EFFECTIVE DATE. The new Congestion Fee would take effect on September 16, 2001 or whenever the limits resulting from the FAA's AIR-21 slot exemption lottery expire if they are extended by the FAA.

2.2 GENERAL RULES.

2.2.1 Nature of the Congestion Fee. The Congestion Fee would be designed to align the level of demand with the limited capacity of the airfield at LGA. The amount of the Congestion Fee would not be dependent upon the historical costs of the airfield at LGA or otherwise dependent upon accounting costs incurred by the PANYNJ. Initially, the Congestion Fee would not vary during the Congested Period, but in the future the PANYNJ might vary the level of the Congestion Fee during the Congested Period to manage hour-by-hour demand for use of the airfield at LGA.

2.2.2 Operations Subject to the Congestion Fee. All aircraft arriving at or departing from LGA during the "Congested Period" would be assessed a Congestion Fee, except potentially for a limited number of daily flights between small hub and non-hub airports and LGA that might be exempted, as described in Section 2.5 below. Operations at other times would not be subject to the Congestion Fee.

2.2.3 Definition of Congested Period. The Congested Period would consist of all hours during which the demand for use of the airfield at LGA exceeds its capacity, as well as any hour immediately preceding or immediately following that

period. Based on current conditions, the Congested Period would run from 06:00 to 22.00 on weekdays, from 06:00 to 14:00 on Saturday, and from 09:00 to 22:00 on Sunday.

2.2.4 Existing Landing Fee to Remain in Effect. All aircraft operations at LGA would continue to be subject to and would be required to pay any landing fee established by PANYNJ, in addition to any Congestion Fee. The PANYNJ expects that the existing weight-based landing fee and the minimum landing fee would remain in effect. (The "additional surcharge" of $100 currently levied upon general aviation operations during certain congested hours would be eliminated and, in effect, replaced by the new Congestion Fee.)

2.3 Operations Target.

2.3.1 Initial Target. A target level of operations during the Congested Period would be established before the PANYNJ sets the Congestion Fee. The PANYNJ would set the initial Congestion Fee, and adjust it as necessary, with the intent that there be no more than the target level of operations. The PANYNJ has been considering the desirability and implications of a target level of 78 total operations per hour at LGA for each hour during the Congested Period. This equates to 1248 scheduled and unscheduled operations between the hours of 06:00 and 22:00 each weekday. In monitoring success in reaching such an hourly target, reasonable hourly variations would be deemed acceptable so long as the cumulative number of operations during any three-hour period during any portion of the Congested Period did not exceed three times the hourly target.

2.3.2 Revision of Operations Target or Congested Period. The FAA, DOT and PANYNJ would continue to monitor the actual level of delay experienced at LGA, and the operations target or the definition of the Congested Period, or both, could be revised if actual delays and flight cancellations are significantly higher or lower than anticipated.

2.4 Revisions to Congestion Fee. The PANYNJ would periodically review operational results under the Congestion Fee and would adjust the amount of the Fee if actual operations were significantly higher or lower than the operations target. The PANYNJ could also use the proceeds from the Congestion Fee to purchase or lease HDF or AIR-21 operating authority from any airline, and hold the authority in abeyance to reduce the level of demand for use of the airfield.

2.5 Exemption for Small Hub and Non-hub Service. The PANYNJ is considering the desirability of exemptions from the Congestion Fee for certain operations that serve airports that qualify for AIR-21 small hub or non-hub service under 49 U.S.C. § 41716(a) and DOT Order 2000-4-11. Three potential approaches under consideration are exemptions for (i) 80 operations (or a lower number that would increase the overall operating efficiency of LGA) qualified under AIR-21 for small hub or non-hub service; (ii) all AIR-21 qualified operations serving small hub or non-hub airports within 300 miles of LGA, for example, given that passengers in markets within this distance have few connecting flight options; or (iii) a combination of these two approaches. The PANYNJ has also considered whether it would be desirable to exempt new entrant airlines from the Congestion Fee, but presently believes that such an exemption might be anti-competitive.

Any small hub and non-hub operations exempted from the Congestion Fee would be allocated by a lottery among the airlines providing or seeking to provide service to small hub or non-hub airports. The selection sequence among airlines that seek Congestion Fee exemptions for small hub and non-hub operations would be established using a lottery. Participating airlines would be able to obtain two exemptions from the Congestion Fee in each of successive rounds of the allocation, until the entire number of exempt operations has been assigned. The small hub and non-hub operations exempted from the Congestion Fee would be reallocated among airlines every two years, in the same manner. A new lottery would be conducted each time that this allocation takes place. The lottery would only be used to determine the sequence of selections. It is presently contemplated that the exemptions allocated by the lottery could not be traded and would be subject to a "use or lose" restriction to ensure that desired service is provided to smaller airports. Any unused exemption authority that is returned to the PANYNJ would be redistributed by picking up the selection sequence from where the lottery last ended.

PROVISIONS THAT DIFFER BETWEEN OPTION A AND OPTION B

2.6 Structure and Initial Amount of the Congestion Fee.

Option A (no change in HDR): Under Option A, all aircraft operators would pay the same Congestion Fee during the Congested Period except for a certain number of daily flights between small hub and non-hub airports and LGA. It is currently anticipated that the initial level of the Congestion Fee under Option A would be in the range of $350-$700 for each arriving and departing aircraft.

Option B (gradual reduction of HDR constraints): Under Option B, there would be two separate Congestion Fees. The first would be charged for operations during the Congested Period that serve any airport that qualifies for AIR-21 small hub or non-hub service under 49 U.S.C. § 41716(a) and DOT Order 2000-4-11, except for a certain number of daily flights between small hub and non-hub airports and LGA, as well as for general aviation operations. The second would be charged for all other operations. It is currently anticipated that the initial level of the Congestion Fee under Option B would be in the range of $350-$700 for each arriving and departing aircraft serving AIR-21 qualified destinations (and general aviation), and in the range of $700-$2000 for all other arriving or departing aircraft.

2.7 Revenue Estimates.

Both Congestion Pricing options would be expected to produce significant streams of revenue that would be dedicated to beneficial aviation uses (see Section 1.3.4. above).

Option A (no change in HDR): A Congestion Fee of $350-$700 per operation is estimated to yield additional annual revenues to the PANYNJ of approximately $130-$260 million per year.

Option B (gradual reduction of HDR constraints): A general Congestion Fee of $700-$2000 for each operation during the Congested Period, combined with a Small Hub/Non-Hub Congestion Fee of $350-$700 per operation, is estimated to yield additional annual revenues to the PANYNJ of approximately $240-$550 million.

3. ALLOCATION AND AUCTION OF RESERVATIONS.

INTRODUCTION. This alternative would replace the current system of HDR slots and AIR-21 slot exemptions. Airlines would instead be required to have a "Reservation" in order to conduct an operation at LGA during the Congested Period. Reservations would be limited in number, to ensure that the level of operations at the airport is aligned with the limited capacity of its airfield. Reservations would be available to new market entrants and smaller market participants, and mechanisms would be established to permit the regular reallocation of Reservations over time. This method would allocate the total number of available Reservations during each hour in the Congested Period in four distinct tranches or groups.

First, each airline would be permitted a Baseline Allocation of at least 20 Reservations each day. This is intended to ensure that new entrants will have an opportunity to provide service at LGA. Second, a total of 80 Reservations would be reserved each day for flights to or from small hub or non-hub airports qualifying for service under AIR-21; these Reservations would be allocated among the airlines seeking to provide these services using a lottery similar to the FAA's December 2000 AIR-21 slot exemption lottery, an auction, or a combination of these methods. This set aside for service to small hub and non-hub airports is intended to ensure that there will remain a reasonable level of service between smaller airports and LGA, and to encourage the efficient use of the capacity reserved for this purpose. (No airline would be prevented from using other Reservations as well to serve small hub or non-hub airports from LGA.) Third, 70 percent, or a lesser share, of the remaining Reservations each day would be allocated in proportion to each airline's share of total passenger volumes at LGA. This Performance-

Based Allocation is intended to provide a reasonable degree of stability in the market while creating an incentive for airlines to use Reservations productively by carrying more passengers on each flight. Fourth, the remaining Reservations would be auctioned, without restriction as to use. This is intended to encourage efficient use of the remaining capacity at LGA and to promote competition.*

This Reservations alternative is described in two potential forms, Option A and Option B, which are currently under consideration by the PANYNJ.

Option A contemplates immediate replacement of all HDR slots and AIR-21 slot exemptions authorized by the lottery with a new system of Reservations, which would be reallocated every two years.

Option B differs from Option A is one principal respect: Option B contemplates, in effect, a four-year phase out, rather than immediate replacement, of operating authority under the existing High Density Rule. This phase out would be accomplished through adjustments to the Baseline Allocation. Although all HDR slots would formally be withdrawn immediately, each airline would be guaranteed to receive in its Baseline Allocation for the first year a number of Reservations representing at least 75 percent of the number of HDR slots and AIR-21 slot exemptions it is currently using. As the new program is phased in, this guarantee would decline to 50 percent for the second year and 25 percent for the third year. The phase out of the current HDR slot system would not be complete until the fourth year. During the first four years Reservations would be

* A hypothetical illustration of how the total number of Reservations in the Congested Period would be divided among these four tranches in Option A is attached at the back of this document. The division of Reservations in Option B would take a similar form,

assigned for only one year, but thereafter Reservations would be reallocated every two years, as in Option A.

3.1 EFFECTIVE DATE. The new system of Reservations would take effect on September 16, 2001 or whenever the limits resulting from the FAA's AIR-21 slot exemption lottery expire if they are extended by the FAA.

3.2 RESERVATIONS.

3.2.1 Need for an LGA Reservation. A Reservation would authorize an aircraft operation at LGA, either for an arrival or a departure, during a specified hour on a specified day of the week. Reservations for scheduled flights would be allocated through the mechanisms described in Section 3.3 below. Unscheduled operations would not be permitted unless there is an available Reservation in accord with Section 3.2.3.2 below. It would be a violation of the PANYNJ's Rules and Regulations governing LGA for any aircraft to arrive at or depart from LGA during the "Congested Period" without a Reservation.

3.2.2 Definition of Congested Period. The "Congested Period" would be the same for the system of Reservations as it would be for Congestion Pricing (see Section 2.2.3 above).

3.2.3 Number of Reservations. The total number of operations to be permitted during each hour of the Congested Period would be established before the new system of Reservations is implemented. The PANYNJ has been reviewing the

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although during the phase-in period the total number of Reservations in the Baseline Allocation would be expected to be higher.

desirability and implications of using 81 as the total number of Reservations for operations at LGA would be permitted for each hour during the Congested Period. The allowance for 81 hourly Reservations would produce approximately the same results as the target of 78 actual hourly operations envisioned under the Congestion Fee alternatives. If 81 hourly Reservations are allowed, the frequent cancellation of a few scheduled flights for non-LGA operational reasons (*e.g.*, weather effects elsewhere, aircraft mechanical problems) and the lack of use of Reservations by general aviation are typically expected to produce about 78 actual hourly operations. The allowed number of Reservations would be allocated between scheduled and unscheduled operations as follows:

3.2.3.1 Scheduled Operations. A total of 75 Reservations would be available each hour for scheduled operations during the Congested Period. This equates to a total of 1200 Reservations available from 06:00 to 22:00 on weekdays at LGA for scheduled operations.

3.2.3.2 General Aviation and Military Flights: A total of six Reservations would be available each hour for general aviation or military operations during the Congested Period. The FAA would manage the assignment of these Reservations for general aviation and military flights in the same manner as it currently does under the HDR.

3.3 PERIODIC REALLOCATION OF RESERVATIONS FOR SCHEDULED OPERATIONS.

Option A (no phase in): Reservations to conduct a scheduled operation at LGA would be allocated every two years. The first allocation would be scheduled so that the results would take effect on the Effective Date.

Option B (four-year phase in): Reservations to conduct a scheduled operation at LGA would be allocated for a one-year period for each of four years, during which allocations based on existing HDR slot allocations would be phased out. The first allocation would be scheduled so that the results would take effect on the Effective Date. At the end of the first four years, the phase-out would be completed, and thereafter the reallocation of Reservations would take place every two years.

3.3.1 Baseline Allocation. In order to ensure that new airlines may enter the LGA market and that limited incumbents may expand the scope of their operations, and to provide an appropriate incentive for the provision of service to small hub or non-hub airports that is consistent with the limited capacity at LGA, all airlines would be eligible for a Baseline Allocation of Reservations for each day of the week.

Each request for a Baseline Allocation would require a refundable financial deposit provided to the PANYNJ for each requested Reservation. If the requesting airline obtains a Reservation and complies with the use-or-lose requirement set forth in Section 3.5.2 below for one full calendar year, the financial deposit would be returned; otherwise, it would be forfeited to the PANYNJ.

3.3.1.1 Initial Baseline Allocation.

Option A (no phase in): Each airline would be permitted to obtain a Baseline Allocation of up to 20 Reservations for each day of the week to use for service between LGA and any other destination permitted under the LGA Perimeter Rule. (AIR-21 uses 20 operations as the measure of an incumbent airline.) In no event, however, would the total number of Reservations assigned to all airlines in any Baseline Allocation exceed 300. In the event that the total number of Reservations properly requested in the Baseline Allocation exceeds 300, each airline's requests would be reduced proportionately so that the total number of Reservations in the Baseline Allocation equals 300.

Option B (four-year phase in): Each airline would be permitted to obtain an initial Baseline Allocation of a number of Reservations for each day of the week to use for service between LGA and any other destination permitted under the LGA Perimeter Rule.

For the first year, this number would be equal to the greater of (i) 20 Reservations, or (ii) 75 percent of the total number of HDR slots that were assigned to the airline as of June 30, 2001 and used at least 80 percent of the time during the preceding two months.
For the second year, this number would be equal to the greater of (i) 20 Reservations, or (ii) 50 percent of the total number of HDR slots that were assigned to the airline as of June 30, 2001 and used at least 80 percent of the time during the preceding two months.
For the third year, this number would be equal to the greater of (i) 20 Reservations, or (ii) 25 percent of the total number of HDR slots that were assigned to the airline as of June 30, 2001 and used at least 80 percent of the time during the preceding two months.

For the fourth year, and in every biennial reallocation thereafter, each airline would be permitted to obtain up to 20 Reservations each day of the week to use for service between LGA and any other destination in the same manner, and subject to the same rules, as under Option A.

3.3.1.2 Assignment Mechanism. Each airline could determine the hours during which the Reservations would be used. However, during the Congested Period, no airline could use Reservations acquired in the Baseline Allocation to schedule during any 60-minute period more than the greater of (i) two operations, or (ii) 6.5 percent of the airline's daily Reservations (*i.e.* one-sixteenth, reflecting the 16 hour Congested Period on weekdays).

3.3.1.3 Subsequent Requests for Baseline Allocation. A new entrant airline or other airline that chose not to obtain its full Baseline Allocation could request additional Baseline Reservations at any time, up to the maximum number of permitted Baseline Reservations, by making a "subsequent request" for a further Baseline Allocation. The PANYNJ could allocate additional Reservations up to such airline's full Baseline Allocation, either by (1) issuing unassigned Reservations, including Reservations that have been voluntarily returned or forfeited under the use-or-lose requirement set forth in Section 3.7.2 below, or (2) making reasonable efforts to lease a Reservation from another airline, using proceeds from the auction of Reservations under Section 3.3.4 below. If a sufficient number of unassigned Reservations were not available, and the PANYNJ were not able to lease a sufficient number of assigned Reservations from another airline, the requesting airline would be required to await the next regular reallocation to obtain additional Baseline Allocations.

3.3.2 Small Hub and Non-hub Allocation.

Number of Small Hub and Non-Hub Reservations to be Allocated. A total of five Reservations during each hour of the Congested Period would be reserved for service between LGA and any airport that qualifies for AIR-21 small hub or non-hub service under 49 U.S.C. § 41716(a) and DOT Order 2000-4-11. This equates to 80 Reservations between the hours of 06:00 and 22:00 each weekday. This is approximately the current number of AIR-21 slot exemptions for service to small hub or non-hub airports.

3.3.2.2 Assignment Mechanism. For Reservations assigned through the Small Hub and Non-hub Allocation, airlines would select the specific Reservation hours for arriving and departing flight pairs in a sequence as determined by a lottery similar to the lottery used by the FAA in December 2000 to allocate AIR-21 slot exemptions. The selection sequence would be repeated until all of the Reservations made available for the Small Hub and Non-hub Allocation have been assigned specific times. A new lottery would be conducted each time a Performance-Based Allocation is made. The PANYNJ is also considering the desirability of (i) using an auction to assign these Reservations among airlines conducting operations between AIR-21 qualified small hub or non-hub airports and LGA, since this approach may produce a more efficient result; (ii) assigning these Reservations among airlines conducting operations between AIR-21 qualified small hub or non-hub airports that are within 300 miles of LGA, for example, given that passengers in markets within this distance have few connecting flight options; or (iii) a combination of these approaches.

3.3.3 **Performance-Based Allocation.** After the Baseline Allocation and the Small Hub and Non-Hub Allocation have been completed, 70 percent (or a lesser share that would increase the overall operating efficiency of LGA) of all remaining Reservations for scheduled operations would be allocated among airlines based on their market share of total revenue passengers at LGA. Presently, the core connecting hub and shuttle businesses of the incumbent airlines at LGA in aggregate account for approximately 70 percent of the total passenger volume at the airport.

3.3.3.1 Determination of Reservations Subject to Performance-Based Allocation. For each hour of the Congested Period of each day of the week, the number of Reservations that are to be allocated by the Performance-Based Allocation would be calculated as 70 percent, or a lesser share, of the difference between (a) the total number of Reservations available for use by scheduled airlines in that hour, and (b) the sum of (i) all Reservations claimed for that hour under the Baseline Allocation and (ii) all Reservations claimed for that hour for use as one of the 80 Reservations reserved for the Small Hub and Non-Hub Allocation.

3.3.3.2 Calculation of Market Share. Each airline's share of the LGA market would be determined on the basis of passenger enplanements on all flights at LGA as reported to the United States Department of Transportation for the most recently available 12-month period.

3.3.3.3 Calculation of Each Airline's Performance-Based Allocation. The Performance-Based share of Reservations for each airline would be determined by multiplying each airline's market share by the sum of (i) the total number of Reservations that are to be assigned by the Performance-Based Allocation (determined

under Section 3.3.3.1 above) and (ii) the total number of Reservations assigned under the Baseline Allocation, and then subtracting from that product the total number of Reservations assigned to the airline in the Baseline Allocation. If the total number of Reservations assigned to the airline in the Baseline Allocation exceeds its Performance-Based share of Reservations, the airline would receive no additional Reservations through the Performance-Based Allocation.**

3.3.3.4 Assignment Mechanism. For Reservations assigned through the Performance-Based Allocation, airlines would select the specific Reservation hours for arriving and departing flight pairs in a sequence as determined by a lottery similar to the lottery used by the FAA in December 2000 to allocate AIR-21 slot exemptions. Once an airline has acquired its total number of allocated Performance-Based Reservations, it would be passed over in the lottery sequence. The selection sequence would be repeated until all of the Reservations made available for the Performance-Based Allocation have been assigned specific times. A new lottery would be conducted each time a Performance-Based Allocation is made.

3.3.4 Auction of Remaining Reservations.

3.3.4.1 Number of Remaining Reservations to be Auctioned. All LGA Reservations for scheduled operations that remain after the Baseline Allocation,

** The PANYNJ acknowledges that especially if Option A were implemented, the initial Performance-Based Allocations could cause abrupt changes in the total number of flights certain airlines might be permitted to operate at LGA because the current mix of assignments of HDR slots and slot exemptions and AIR-21 slot exemptions does not always correspond to airline market shares (measured by passenger volumes). As a result, the PANYNJ is considering the desirability of some kind of "hold harmless" rule that would temper the impact of the Performance-Based Allocations by ensuring that no

the Small Hub and Non-hub Allocation and the Performance-Based Allocation would be subject to auction.

3.3.4.2 Revenue Estimate. In both of the Allocation and Auction options, the Auction of Remaining Reservations would be expected to produce significant streams of revenue that would be dedicated to beneficial aviation uses (see Section 1.3.4 above). The Auction of Remaining Reservations is estimated to yield additional annual revenues to the PANYNJ of approximately $60 million to $90 million for Option A and for Option B once it is fully implemented. Option B is estimated to yield additional revenues of approximately $18-$26 million in the first year, $35-$53 million in the second year, and $53-$79 million in the third year. These estimates assume auction prices in the range of $20,000 to $30,000 per Reservation per month.

3.4 Auction Rules: The specific rules for participating in and conducting Auctions of Remaining Reservations would be promulgated in advance of the initial Auction.

3.5 GENERAL RULES GOVERNING RESERVATIONS.

3.5.1 Treatment of Commuter Affiliates. All airlines sharing a common designator code would be considered a single airline for the purpose of allocating Reservations.

3.5.2 Use-or-Lose Requirement. All Reservations would be subject to a use-or-lose requirement, under which an airline would forfeit any Reservation that is

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airline would lose more than a specified percentage of the operating authority it was assigned and actually used during the preceding allocation period.

not used for operations at least 80 percent of the time over any two-month period. Any airline that forfeits a Reservation under this use-or-lose rule could not acquire any additional Reservation for a two-year period, except through the next scheduled auction Airlines could avoid any use-or-lose penalty by returning a Reservation to the PANYNJ for reallocation. The PANYNJ could use Reservations that are returned voluntarily or that are forfeited under the use-or-lose requirement to satisfy additional requests for Baseline Allocations in between the scheduled reallocations of Reservations.

3.5.3 Exchange, Sale, or Lease of Reservations.

3.5.3.1 Baseline Allocation Reservations. Reservations acquired through a Baseline Allocation could be exchanged between airlines, so long as the trade was made only for operational reasons and on a one-for-one basis at LGA. Airlines that trade Reservations from their Baseline Allocation would be required to certify that no other consideration is involved. Reservations acquired through a Baseline Allocation could not be sold or leased to another airline (except, under Option B, to the extent that any airline receives at any time during the four-year phase in a total Baseline Allocation of more than 20 Reservations for any given day), but these Reservations could be sold or leased to the PANYNJ.

3.5.3.2 Other Reservations. Reservations acquired through the Small Hub and Non-hub Allocation, the Performance-Based Allocation or the Auction or Remaining Reservations could be exchanged between or among airlines, or could be sold or leased to another airline or to the PANYNJ, but any Reservations acquired through the Small Hub and Non-Hub Allocation could only be used for service between LGA and AIR-21 qualified small hub and non-hub airports.

3.5.4 Airfield Fees. All aircraft operations at LGA, including those for which an auction price is paid, would remain subject to any landing or take-off fees established by the PANYNJ. The PANYNJ currently anticipates that the existing weight-based landing fee would remain in effect, and that the current minimum fees for general aviation might be increased to the range of $350-$700 for each arriving and departing aircraft.

Illustration of Allocation and Auction of Reservations
Option A

	Inputs	Number of Reservations
Hours in the Congested Period	16	
Reservations per hour	81	
Total Number of Reservations in the Congested Period		1296
GA set-aside per hour	6	
Total GA set-aside in the Congested Period		96
Net Reservations for scheduled services		1200
Number of airlines	15	
Baseline Allocation/airline	20	
otal Baseline Allocation (if fully subscribed)		300
Remaining Reservations		900
Small hub/non-hub set-aside per hour	5	
Small hub and Non-hub Allocation		80
Remaining Reservations		820
Performance-Based share of remaining reservations	70%	
Number of Reservations for Performance-Based Allocation		574
Remaining Reservations for Auction		246